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§16–412. IN EFFECT

**** IN EFFECT UNTIL SEPTEMBER 1, 2022 PER CHAPTERS 16 AND 27 OF THE 2021 SPECIAL SESSION****

(a) (1) In this section the following words have the meanings indicated.

(2) “Agreement” means a written contract between the public employer and an employee organization.

(3) “Arbitration” means a procedure whereby parties involved in a grievance dispute submit their differences to an impartial third party for a final and binding decision.

(4) “Collective bargaining” means the performance by the certified employee organization, through its designated representative, and the public employer, of their mutual obligations to meet at reasonable times and to negotiate in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any questions arising under an agreement, and the execution of various agreements incorporating the terms agreed upon by both parties. In the performance of this obligation neither party shall be compelled to agree to a proposal, or be required to make a concession to the other.

(5) “Commissioner” means the State Commissioner of Labor and Industry or the Commissioner’s designee.

(6) “Confidential employee” means a public employee whose unrestricted access to personnel, budgetary or fiscal data subject to use by the public employer in collective bargaining or whose close, continuing working relationship with those responsible for negotiating on behalf of the public employer would make the employee’s membership in an employee organization as a rank and file employee incompatible with the employee’s duties.

(7) “Employee organization” means any organization of public employees which has as one of its primary purposes representing such employees in collective bargaining.

(8) “Exclusive representative” means an employee organization which has been certified by the Commissioner as representing the employees of the bargaining unit.

(9) “Fact-finding” means identification of the major issues in a particular impasse, review of the positions of the parties and resolution of factual differences by an impartial individual or panel, and the making of recommendations for settlement of the impasse.

(10) “Grievance” means a dispute concerning the application or interpretation of the terms of an agreement.

(11) “Impasse” means failure of the public employer and an exclusive representative to achieve agreement in the course of collective bargaining.

(12) “Mediation” means assistance by an impartial third party to reconcile a dispute arising out of collective bargaining through interpretation, suggestion, and advice.

(13) “Professional employee” means a public employee whose work is predominantly nonroutine and intellectual in character and who is employed to teach or render professional services at least equivalent to 12 semester hours per semester.

(14) “Public employee” means an employee employed by the public employer except:

- (i) Employees involved directly in the determination of policy;
- (ii) Supervisory or confidential employees; and
- (iii) Student assistants.

(15) “Public employer” means the Board of Trustees of Montgomery Community College.

(16) “Strike” means a public employee’s refusal, in concerted action with others, to report for duty, or willful absence from the position, or stoppage of work, or abstinence in whole or in part from the proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in the wages, hours, or other terms and conditions of employment.

(17) “Supervisory employee” means a public employee having authority in the interest of the employer: (i) to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees; or (ii) to direct employees responsibly; or (iii) to adjust employee grievances; or (iv) to recommend effectively the action, set forth in subparagraph (i), (ii), or (iii) of this paragraph, if the exercise of this authority is not merely of a routine or clerical nature, but requires

the exercise of independent judgment. Department chairmen may not be considered supervisory employees for the purposes of this section, unless the department chairmen clearly perform the functions in this paragraph.

(b) The public employer shall determine whether a public employee is to be considered a public employee for collective bargaining purposes. Either party or an employee organization may appeal the determination to the Commissioner for a final and binding decision.

(c) Upon receipt of a petition for an election for exclusive representative, the Commissioner shall investigate the petition for purposes of verification and validation, and conduct a public hearing, receive written and oral testimony, and thereafter file an order defining the most appropriate bargaining unit. There shall be no more than two professional units. In defining a bargaining unit, the Commissioner shall consider, in addition to other relevant factors, the efficiency of operations of the public employer, the effect of over-fragmentation of bargaining units on the efficient administration of the public employer, the community of interest of public employees, and the administrative structure of the public employer. The Commissioner may not find any unit appropriate that includes both professional and nonprofessional employees unless a majority of each group votes for inclusion therein.

(d) (1) After October 1, 1978, an election for exclusive representative shall be conducted by the Commissioner for each unit after the requirements of subsections (b) and (c) of this section have been met by that unit.

(2) A petition for an election may be submitted by:

(i) An employee organization demonstrating that 30 percent of the employees in a bargaining unit wish to be represented for collective bargaining by an exclusive representative;

(ii) A public employee, a group of public employees, or an employee organization demonstrating that 30 percent of the employees assert the designated exclusive representative is no longer the representative of the majority of employees in the unit; or

(iii) The public employer demonstrating that one or more employee organizations has presented to it a claim, supported by substantial proof, to be certified as the exclusive representative, and the Commissioner finds, on investigation of the petition, that a valid question of representation exists.

(3) There shall be on the ballot:

(i) The name or names of the employee organization submitting the valid petition;

(ii) The name of any other employee organization or organizations designated on a valid petition signed by more than 10 percent of the employees in the appropriate bargaining unit; and

(iii) A provision for “no representation”.

(4) In any election where none of the choices on the ballot receives a majority of the votes cast, a runoff election shall be conducted, with the ballot providing for a selection between the two choices receiving the highest number of ballots cast in the election. An employee organization receiving a majority of votes cast in an election shall be certified by the Commissioner as the exclusive representative for collective bargaining purposes. An employee organization may not be certified as an exclusive representative, except pursuant to the provisions of this section.

(5) All elections shall be conducted (i) by secret ballot and (ii) by the Commissioner or the Commissioner’s designee.

(6) Elections may not be conducted in any unit within which a valid election has been held within the preceding 2 years.

(e) (1) The public employer shall extend to an employee organization certified as exclusive representative the right to represent the public employees of the unit involved in collective bargaining and in the settlement of grievances.

(2) An employee organization certified as the exclusive representative shall serve as the bargaining agent for all public employees in the bargaining unit. The organization shall represent fairly and without discrimination all public employees in the unit without regard to whether the employees are members of the employee organization.

(3) Every employee organization which has or seeks certification as an exclusive representative shall file with the public employer and the Commissioner, a copy of the employee organization’s constitution and bylaws. All changes and amendments to the constitution and bylaws shall be promptly reported.

(4) Every employee organization shall file with the public employer and the Commissioner an annual report. It shall include a financial report signed by its president and treasurer or corresponding principal officers containing information in such detail as necessary accurately to disclose its financial condition and operations.

(5) The constitution or bylaws of every employee organization shall provide that:

(i) It shall include a pledge that the organization will accept members without regard to age, race, sex, religion, marital status, or national origin;

(ii) Accurate accounts of all income and expenses be kept, and an annual financial report be prepared. The accounts shall be open for inspection by any member of the organization, and loans to officers and agents shall be made only on terms and conditions available to all members;

(iii) Periodic elections by secret ballot be subject to recognized safeguards concerning the equal right of all members to nominate, seek office, and vote in the elections;

(iv) Individual members have the right to participate in the affairs of the organization; and

(v) Procedures in disciplinary actions are fair and equitable.

(6) An employee organization that has not filed an annual report or whose constitution and bylaws do not conform to the requirements of paragraph (5) of this subsection may not be or remain certified for the purpose of negotiating with the public employer.

(f) (1) It is declared to be in the public interest that, in the course of collective bargaining, the public employer and the exclusive representative make every reasonable effort to conclude negotiations prior to the budget submission date of the public employer, in order that the appropriate legislative body may act on the operating budget of the employer.

(2) (i) If in the course of collective bargaining a party deems that an impasse exists, that party may request the services of the Commissioner in mediation or engage another mutually agreed upon mediator.

(ii) The parties by mutual agreement may engage in fact-finding. If there is not mutual agreement, either party, after a reasonable period of mediation, may petition the Commissioner to initiate fact-finding. The Commissioner upon considering the status of bargaining and the budget schedule of the public employer may find that an impasse exists, and may notify the parties that fact-finding is to be initiated. The public employer and the exclusive representative may select their own fact finder. If the parties have not selected their own fact finder within 5 days of the required notification, the Commissioner shall submit to the

parties the names of five qualified persons. Each party alternately shall strike two names from the list. The order of striking shall be determined by lot. The remaining individual shall be the fact finder. The fact finder selected by the parties shall conduct hearings and may administer oaths. The fact finder shall make written findings of fact and recommendations for resolution of the impasse. No later than 30 days from the date of appointment the fact finder shall transmit the findings to the public employer and the exclusive representative. If the impasse continues 10 days after the report is submitted to the parties, the report shall be made available to the public.

(iii) Costs of fact-finding shall be borne equally by the parties.

(3) Public employees may not engage in a strike.

(4) If a strike of public employees occurs in Montgomery County, a court of competent jurisdiction may, upon request of the public employer, enjoin the strike.

(5) A public employee may not receive pay or compensation from the public employer for any period during which the public employee is engaged in a strike.

(6) If an employee organization certified as an exclusive representative engages in a strike, its certification as exclusive representative shall be revoked by the Commissioner, and that employee organization or any other employee organization which engages in a strike shall be ineligible to be certified as an exclusive representative for a period of 1 year following the end of the strike.

(g) (1) A written agreement shall be executed by the public employer and the exclusive representative incorporating any matters of agreement reached on wages, hours, and other terms and conditions of employment.

(2) A collective bargaining agreement may include a provision for the arbitration of grievances arising under an agreement.

(3) A collective bargaining agreement may not include matters relating to the employees' or teachers' retirement systems as set forth in the Annotated Code of Maryland. However, this provision does not exclude discussion of the terms of the retirement systems in the course of collective bargaining.

(4) The terms of the agreement shall supersede any conflicting rules, regulations, and administrative policies of the public employer.

(5) Any request for funds necessary to implement the agreement shall be submitted by the public employer in a timely fashion for consideration in the budget process of the county.

(6) If the request for funds necessary to implement the agreement is reduced, modified, or rejected by the governing body of Montgomery County, either party to the agreement may, no later than 20 days after final budget action by the governing body, reopen the agreement.

(h) The public employer has the right (1) to determine how the statutory mandate and goals of the college, including but not limited to the functions and programs of the college, its overall budget and its organizational structure, are to be carried out; and (2) to direct the personnel.

(i) (1) Public employees have the right of self-organization to form, join, or assist any employee organization, to bargain collectively through representatives they have chosen, and to engage in other lawful concerted activities for the purpose of collective bargaining and also shall have the right to refrain from any or all of these activities.

(2) Any public employee or group of public employees has the right at any time to present grievances arising under the terms of the agreement to the public employer and to have the grievances adjusted without the intervention of the exclusive representative. The public employer has the duty to hear those grievances and participate in their adjustment. However, the adjustment may not be inconsistent with the terms of a collective bargaining agreement then in effect. The public employer shall give prompt notice of all adjustments to the exclusive representative.

(3) The public employer and a public employee organization shall not interfere with, intimidate, restrain, coerce, or discriminate against public employees because of the exercise of their rights under paragraphs (1) and (2) of this subsection.

(j) The authority granted by this section, any procedures adopted and any decision, action, or agreements made pursuant to it shall expire should a subsequent public general law on collective bargaining generally applicable to the community colleges become effective.

(k) Except as provided in this section, the enactment of this section shall not be construed to make the provisions of the Maryland labor laws contained in Title 4, Subtitles 1, 2, and 3 of the Labor and Employment Article applicable to employment at Montgomery Community College.

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